



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Ganesh v Craig, 2023 ONLTB 76318

Date: 2023-11-22

File Number: LTB-L-026876-22

In the matter of: UPPER, LEVEL 15 GARSIDE CRES BRAMPTON
ON L6S1H5

Between: Lilla Ganesh Landlord

And

Jennifer Craig Tenant

Lilla Ganesh (the 'Landlord') applied for an order to terminate the tenancy and evict Jennifer Craig (the 'Tenant') because:

- the Landlord has entered into an agreement of purchase and sale of the rental unit and the purchaser in good faith requires possession of the rental unit for the purpose of residential occupation.

This application was heard by videoconference on August 30, 2023. The following individuals attended the hearing:

- Lilla Ganesh – the Landlord
- Ramadebi Gavisetty – Landlord’s legal representative
- Brian Genesh – the Purchaser and Landlord’s witness
- Asha Persaud – the Purchaser and Landlord’s witness
- Jennifer Craig – the Tenant
- Jessica Travers – Tenant’s legal representative

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy.
2. The Tenant was in possession of the rental unit as of the hearing date.
3. The Landlord's application is based on a N12 notice of termination served to the Tenant on April 29, 2022 with a termination date of June 30, 2022. The N12 notice indicates that the Landlord has entered into an agreement of purchase and sale of the rental unit and that the purchasers in good faith require the rental unit for their own personal use.
4. The rental property is a semi-detached dwelling consisting of two rental units (Basement and Upper). The Tenant subject to this application resides in the Upper unit.

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5. There is no dispute that the Landlord has entered into agreement of purchase and sale for the entire rental property and that the Landlord has also served a N12 notice on the tenant residing in the basement unit.
6. The Landlord paid to the Tenant compensation equal to one month's rent on May 17, 2022.
7. The purchasers have filed an affidavit with Board stating that the purchasers in good faith require the rental property for their own personal use.
8. The Landlord entered into evidence an agreement of purchase and sale for the rental property dated April 28, 2022 (LL exhibit #1). The rental property was sold to the Tenant's son and daughter in law for the sum of \$950,000.00.
9. The purchasers testified that they currently reside in a 600 sq ft, one bedroom and one bathroom condo with two children ages 5 and 1. The purchasers are currently expecting a third child in the coming months and as such, require the rental property for additional living space. The purchasers submitted into evidence photographs of their current residence showing the lack of living space (LL exhibit #2).
10. The Tenant does not dispute that the Landlord entered into an agreement of purchase and sale of the rental property but testified that she believes the Landlord sold the property because she and the basement tenant previously objected to the Landlord's demands for illegal rent increases in 2021. The Tenant believes that the Landlord's son and/or purchaser will most likely re-rent the unit once they obtain vacant possession.
11. The Tenant entered into evidence email correspondence between herself and the Landlord dated August 25, September 2 and 21, 2021 (TT exhibit). The emails confirm the Landlord's prior attempts to increase the rent above the lawful guideline amount in 2021 and that the Landlord previously served the Tenant with an N12 notice of termination alleging that her daughter required the rental unit for her own use.
12. The Landlord did not dispute that she approached both Tenants to inquire about raising the rent in 2021 by approximately \$200.00 per month but stated that she was not aware that this was in violation of the *Residential Tenancies Act* (the Act). The Landlord stated that

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she decided to sell the rental property because she no longer wished to be a landlord and found that the two rental units were not generating sufficient income. The Landlord also stated that after serving the N12 notice in 2021 that her daughters' intentions changed and as such, she no longer required the rental unit. The Landlord then opted to sell the property.

Analysis:

13. The Landlord's N12 notice was served pursuant to section 49 of the Act which states in part:
 - 49 (1)** A landlord of a residential complex that contains no more than three residential units who has entered into an agreement of purchase and sale of the residential complex may, on behalf of the purchaser, give the tenant of a unit in the residential complex a notice terminating the tenancy, if the purchaser in good faith requires possession of the residential complex or the unit for the purpose of residential occupation by,
 - (a) the purchaser
14. Based on the evidence before the Board, I find that the Landlord has established on a balance of probabilities that the purchasers in good faith require the rental unit for their own personal use.
15. The purchaser's testimony was credible and consistent throughout the hearing and there was insufficient evidence to suggest that the purchasers have different motives or intentions in obtaining occupancy of the rental property.
16. The Tenant did not dispute that the Landlord had entered into a valid agreement and purchase and sale of the property, and the bulk of the Tenant's evidence was with respect to the conduct of the Landlord and the reasons for the Landlord selling the rental property. The Tenant argued that the Landlord sold the rental property because both Tenants rejected and opposed the Landlord's attempts to illegally increase the rent in 2021 (one year prior to the sale of the property).
17. Section 83(3)(c) of the Act states that the Board must refuse termination of tenancy when the Board is satisfied that "the reason for the application being brought is that the tenant has attempted to secure or enforce his or her legal rights". I do not find the Landlord's application should be dismissed pursuant to this section.
18. As stated above, the Landlord's application was brought because the Landlord entered into an agreement of purchase and sale of the rental property and because the purchasers required the rental unit for their own personal use.

19. While it may be true that the reasons for the Landlord selling the rental property were because the Tenants did not agree to an illegal increase in rent, I do not find this conduct, which took place prior to the agreement of purchase and sale diminishes the good-faith intentions of the purchasers. The Landlord is ultimately entitled to sell their own property and decide to exit the business of being a landlord. I find that it would be unreasonable to expect a landlord to not be permitted to sell their property and remain a landlord indefinitely simply because they were once in breach of the Act.
20. I also see no issue with the Landlord selling the rental unit to their son and/or immediate family member as the evidence before the Board was clear that the rental unit was sold for market value (\$950,000.00). This is not a case where the landlord sold the property for little or no monetary consideration to suggest a bad faith intention.

Relief from eviction:

21. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until January 5, 2024 pursuant to subsection 83(1)(b) of the Act.
22. The Tenant has resided in the rental unit since 2017 and resides with her child. As we are approaching the holiday season and because this is a no-fault eviction application and long-term tenancy, I find that it would not be unfair to delay termination to allow the Tenant some additional time to secure alternate housing. I find that delaying further would be unfair to the Landlord and the purchasers given the delay since the agreement of purchase and sale was first entered into.
23. This Order contains all the reasons for this matter. No further reasons will issue.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before January 5, 2024.
2. If the unit is not vacated on or before January 5, 2024, then starting January 6, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after January 6, 2024.

November 22, 2023

Fabio Quattrociochi

Date Issued

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on July 6, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.